In the Supreme Court

OF THE

United States

OCTOBER TERM, 1943

No.

EVELYN FLYNN,
Petitioner,

vs.

CHESTER BOWLES, Price Administrator,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

No opinion was given by the United States Emergency Court of Appeals in this case. The final judgment is included in the transcript of record of the case on the last page thereof.

I.

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The judgment of the United States Emergency Court of Appeals was dated December 2, 1943. The

final order of said Court denying rehearing in said cause was dated December 15, 1943.

The petition for a writ of certiorari is filed in the Supreme Court of the United States in this cause pursuant to the procedure specifically provided in Sections 203, 204 and 204(d) of the Emergency Price Control Act of 1942. (Act Jan. 30, 1942, c. 26, 56 Stat. 23.) The subject matter of her complaint and protest is that contemplated by said sections of the Act. It is therefore a justiciable cause properly before the Supreme Court of the United States for judicial review.

II.

STATEMENT OF THE CASE.

The statement of the case hereinbefore set forth in the petition for writ of certiorari (p. 2), including the statements of facts included under "Reasons Relied on for Allowance of Writ" (p. 9), is hereby referred to and adopted as the statement of the case herein as if the same were here fully set forth. Reference is also made to the transcript of record in the Emergency Court of Appeals.

Important constitutional questions are involved in this case and should be passed upon by this Honorable Court.

III.

ERRORS OF COURT BELOW.

The United States Emergency Court of Appeals erred in dismissing the complaint; in refusing to inform petitioner of the grounds upon which it was dismissed; in failing to require the administrator, respondent herein, to answer and file a record as provided by Section 204(a) of the Act; in failing to thereafter consider petitioner's cause on its merits; in failing to grant petitioner any relief, declaratory or otherwise.

IV.

DUE PROCESS CLAUSE OF FIFTH AMENDMENT VIOLATED.

Exercise by the Congress of particular "war powers" does not permit it to disregard the Fifth Amendment. In exercising such "war powers" the Congress must respect the Fifth Amendment with the same scrupulous regard as in times of peace.

Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398;

Schecter v. U. S., 295 U. S. 495.

The Courts likewise in construing and adjudicating disputes under these war acts should apply and respect the Fifth Amendment.

> "The Constitution of the United States is a law for rulers and people equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all cir-

> cumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."
>
> *Ex parte Milligan*, 4 Wall. 2, 18 L. Ed. 281.

In the case at bar petitioner's constitutional rights had already been invaded, her property had been taken and withheld from her without compensation for more than ten months before she filed her complaint in the Emergency Court of Appeals. For all this period she had endeavored to obtain relief from respondent and from the Court through the agency of which her property had been taken. When it became apparent that respondent would not release her property or inform her of what rent she could charge for the use of same, and that the Federal District Court would not consider the validity of these actions of respondent, petitioner applied to the Emergency Court of Appeals for relief and adjudication of her rights by the methods provided in the Act.

By dismissing her complaint the Court is facilitating and effecting the continued confiscation and appropriation of petitioner's property by respondent in violation of the due process clause of the Fifth Amendment.

Here petitioner is denied a hearing by a Court of competent jurisdiction even after her property has been taken and she has been denied all administrative relief.

Cases holding that "due process" under the Fifth Amendment require notice and hearing *before,* not *after,* contractual or property rights of the parties are affected to the detriment of either of the contracting parties are as follows:

Ochoa v. Morales, 230 U. S. 139;
Teigle v. Acme Homestead Ass'n, 297 U. S. 189;
Nord v. Griffin (7th Cir.), 86 Fed. (2d) 481 (certiorari denied, 300 U. S. 673);
Boeing Air Transport Inc. v. Farley, 75 Fed. (2d) 765;
Norwood v. Baker, 172 U. S. 269;
Road Improvement Dist. v. St. Louis etc. R. Co., 28 Fed. (2d) 825.

Most of the above causes involved a legislative taking of private property for a public use, and held it to be without due process of law. However, how much more violative of the Fifth Amendment is it to take such property by Court action without notice or hearing before the taking, without compensation granted or offered, and *then* to deny any or all hearing or adjudication by a Court of competent jurisdiction to consider the validity of such taking!

It is very apparent from the representations of respondent to the Emergency Court of Appeals that he seeks to preclude petitioner from any such hearing or adjudication and seeks to compel her to apply to said Court on the very narrow issue as to whether he erred *under the regulation* in denying petition 8—S.F. 30482. He seeks to avoid an adjudication of the regu-

lation itself under which her property has been taken without compensation, notwithstanding that the right to such adjudication is conferred by Sections 203 and 204 of the Act, the procedure of which petitioner has faithfully conformed with.

For a review of this narrow issue on which relief to this petitioner is highly improbable in view of the wide discretion conferred by said regulation upon respondent who devised and promulgated it, respondent insists that petitioner must file a new protest so that he may again review the matter (and delay petitioner) before she may have access to the Court.

As soon as he succeeded in obtaining a dismissal of her complaint, instead of attempting to alleviate her distress or adjudicate the matters in dispute, he sought instead to have her imprisoned and fined $500.00 and to have further property confiscated and withheld from her which petitioner was not renting but had in fact been forced to sell under the distress created by respondent's actions. The Emergency Court of Appeals was informed of these matters in the petition for rehearing or modification of judgment and by telegram dated December 14, 1943 which read as follows:

> "San Francisco Calif Dec 14 1943
> Herman C Beasley, Clerk
> US Emergency Court of Appeals Wash DC
> Re Flynn V Bowles No. 87 please inform court that respondent filed motion in Federal District court yesterday to have complainant fined $500. and imprisoned on issues raised in her protest

and complaint No. 87 concerning which Respondent is wrongfully seeking to avoid a review by his motion to dismiss. Request judgment be set aside and respondent be required to answer complaint or that 10 days be allowed Complainant to file supplement or new petition for rehearing. Court should be fully advised before dismissal this complaint becomes final please wire ruling collect

Evelyn Flynn"

The Court thereupon under date of December 15, 1943 entered its final order denying petitioner's request for relief or modification.

DISMISSAL NOT SUPPORTED BY THE RECORD.

The dismissal of petitioner's complaint is not supported by the record as will be seen by an examination of the contentions advanced by respondent and the objections and answers filed by petitioner and comprising the record of this case before the Emergency Court of Appeals.

To avoid repetition these documents are hereby incorporated herein and made a part hereof as fully as though the same were herein fully set forth.

It will be noted that respondent contended and petitioner denied that her protest was or should be directed against an order denying Petition 30482. Respondent attempted to forward this idea by omitting in the exhibits filed with the Court the date of acknowledgment of service appearing at the close of

said protest. This omission was called to the attention of the Court by letter and the endorsement as appearing on each of the six copies of the protest mailed to Washington read:

> 6 copies of the foregoing Protest was served upon me this 13th day of September, A.D. 1943.
>
> Office of Price Administration
> San Francisco Defense-Rental Area
> By Luther M. Carr
> title Chief Attorney

When petitioner filed her protest (an original and five copies in San Francisco and another original and five copies in Washington, D. C.) she had no knowledge that her petition would be denied on the next day.

Such denial issued the day after the protest was filed was apparently intended by respondent to forestall and defeat petitioner's protest and was in fact a partial if not complete denial of said protest, in view of the fact that she specifically requested in said protest that it be considered *concurrently with said petition* and that a denial of said petition be considered as a denial of her protest so that she might thereupon and without further delay institute action in the United States Emergency Court of Appeals as provided by the Act.

It is obvious from the subject matter of the protest that it embraced far wider issues than contained in Petition 30482 and that it complied with the requirements of Section 203 of the Emergency Price Control Act of 1942 and the requirements of Revised Pro-

cedural Regulation No. 3 as a protest against the validity of Maximum Rent Regulation No. 28 on grounds arising after sixty days from the date of issuance thereof, such grounds being enumerated in paragraph V of said protest as required by Procedural Regulation No. 3.

The reason for requesting that it be considered concurrently with Petition 30482 was stated therein. The fact that the protest incorporated into itself by reference the evidence, testimony and records already before the administrator in the proceedings on Petition 30482 of more than five months duration at that time, could not thereby limit said protest to the issues raised in the original petition. The record of proceedings in that petition will disclose that respondent used the petition not as a means of deciding the issues raised in said original petition but chiefly as a means of obtaining information from petitioner by which he could further harrass and defraud her, maintain contempt charges against her, and further confiscate her property.

By reason of these facts the transcript of record in this petition, incorporated into protest and complaint, contained the evidence commencing with the first action of respondent against petitioner on November 9, 1942 which petitioner required to substantiate her protest and complaint.

An examination of the complaint herein will disclose the nature of the charges therein made and the motives and intent of respondent.

Petitioner respectfully informs this Honorable Court that respondent and the United States Emergency Court of Appeals has gone to great lengths to prevent certain of this evidence from reaching this Honorable Court. This petitioner believes that the cumulative effect and purpose evidenced thereby amounts to malfeasance of office and that petitioner should not be deprived of her property or a hearing on the merits in order that individuals guilty of such misconduct may be protected.

This evidence in substantial part was first offered to the Emergency Court of Appeals in cause No. 10 (which cause was incorporated in the record of Petition 30482, and in protest and complaint herein) on April 12, 1943 and was rejected by said Court on April 15, 1943. In the opinion denying said cause the Court stated:

> "We are thus called upon to consider the constitutional validity of the Act and regulation generally and without regard to their particular application to the complainant."

notwithstanding the fact as shown by the record that the Court had rejected the evidence of particular application to the complainant by orders dated December 29, 1942 and April 15, 1943.

The evidence in substantial part was next offered to the Court in Cause No. 81 which is an appeal from the denial of Protest 15, Region VIII, the record of which is incorporated in the record of Petition 30482 and in protest and complaint herein. In this case

(cause 81) filed August 30, 1943 this petitioner is informed that the Court has refused to require respondent to file a complete and proper record including this evidence notwithstanding that such record was stipulated to between the respondent and the complainant in said cause at the time of said protest proceedings. This petitioner is further informed that as to the part of the record which the Court has required respondent to file in said case; the records have been altered and parts thereof were omitted; that substantial parts of the record still remain to be filed although four and a half months have elapsed since the filing of the case and the rules of the Court provide that such record shall be filed as soon as practicable and in no event later than twenty days after service of the complaint; that the complainant has made exhaustive efforts to remedy these conditions with no avail or results except that respondent has attacked him more viciously in San Francisco and sought to have him fined and imprisoned; and that an attorney, David C. Dunlap, representing respondent in San Francisco threatened the complainant therein that unless he would consent to the elimination of evidence which said complainant deemed essential to this cause that respondent would further delay the proceedings by again filing only such parts as they deemed appropriate and thus again compel said complainant to apply to the Court.

This petitioner is further informed that respondent contends in case No. 81 that the issues involved are much narrower than those raised in the complaint therein, or in petitioner's complaint, and petitioner

therefore believes that notwithstanding that some of the issues raised in each of these cases are similar that it will nevertheless be necessary for her to obtain an adjudication on the issues raised in her complaint, her interests being separate and distinct from those of the complainant in cause No. 81.

CONCLUSION.

This petitioner respectfully requests the indulgence of this Honorable Court for any omissions or defects herein resulting from the fact that she is not represented by counsel, and informs this Honorable Court that she is financially unable to do so because of the position she has been placed in by respondent. Petitioner requests time and permission to file a reply brief in the event this petition is opposed by the government or by respondent herein, and further requests that the matter be submitted on briefs as she will be unable to be present or to be represented at an oral hearing.

Dated, San Francisco, California,
January 8, 1944.

Respectfully submitted,
EVELYN FLYNN,
Petitioner In Propria Persona.